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October 28, 2013

Hon. Richard J. Sullivan
United States District Judge
Southern District of New York
40 Centre Street
New York, New York 10007

Re: United States v. Gary Tanaka 05 cr 621 (RJS)

Dear Judge Sullivan:

On October 25, 2013, Mr. Tanaka established by clear and convincing evidence that he does not pose a risk of flight. Additionally, it was agreed by all parties that the dangerousness factor was not an issue in this case. It was then brought up in Court, for the first time, that the applicable standard for determining bail in this case is not the standard for bail pending re-sentencing, as the government had argued in their letter motion to the Court and Mr. Tanaka had responded to in his reply, but the applicable standard at this juncture is the standard of bail pending appeal. It is our position that the appropriate standard is the standard pending appeal. Even under this different standard, Mr. Tanaka has met his burden.

For a petition for bail pending appeal, Mr. Tanaka “must show by clear and convincing evidence that he does not pose a risk of flight or a danger to the community, and by a preponderance that the appeal is not for purpose of delay, that it raises a substantial question of law or fact, and that if the substantial question is determined in his favor on appeal, the decision of the Court of Appeals would likely result in reversal or an order for a new trial.” *United States v. Nicolo*, 706 F. Supp. 2d 330, 337 (W.D.N.Y. 2010); *United States v. Delanoy*, 867 F.Supp. 114, 115-16 (N.D.N.Y. 1994). As discussed at length in the prior submission on Mr. Tanaka’s behalf and addressed on the record in Court, Mr. Tanaka certainly does not pose a risk of flight. In regards to the second prong,

so as to not belabor the Court with repetitive arguments, Mr. Tanaka adopts the arguments made in co-defendant Vilar's submission to the Court today, October 28, 2013, on the appeal prong only.

For the reasons provided above, Mr. Tanaka respectfully requests that the Court deny the government's application to revoke bail and to keep his bail conditions as is pending re-sentencing and pending the outcome of the petition for rehearing.

Very truly yours,

/s/

Jane H. Fisher-Byrialsen Esq.
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